IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 958 of 1997

For Approval and Signature:
HONOURABLE MR.JUSTICE A.L.DAVE
HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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MAHESHBHAI ALIAS MAHENDRABHAI PRABHATBHAI VAGHELA - Appellant(s)
Versus
STATE OF GUJARAT - Opponent(s)

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Appearance :
MR YN RAVANI for the Appellant.
MR KP RAVAL, APP, for the respondent-State.

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CORAM : HONOURABLE MR.JUSTICE A.L.DAVE

and

HONOURABLE MR.JUSTICE BANKIM.N.MEHTA

Date : 15/01/2007

ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE A.L.DAVE)

1. The appellant came to be tried by Sessions Court, Kheda, at Nadiad, in Sessions case No.89 of 1993, for his alleged act of rape on “S” allegedly committed by him on 15th May, 1992, at about 7.30 A.M. in a farm called 'Shingdawada', situate in the outskirts of village Khumarwad of Mehmedabad Taluka of Kheda District.

1.1 As per the prosecution case, “S” had gone to the field to attend nature's call along with her sister “L”, P.W.1. “S” happens to be congenitally dumb. She happens to be mentally retarded too. After leaving “S” at the field for attending nature's call, “L” went to fetch water, where she heard cries of her sister “S” and, therefore, “L” rushed to the place. She saw “S” lying on ground in the field. She also saw accused running away by jumping the hedge. According to P.W. 1-L, she was informed by her sister “S” that she was raped by the appellant. The duo, therefore, went home and informed their mother. Later on, an F. I. R. came to be lodged in respect of the incident with Kheda Town Police Station. The offence was registered at C.R. No.40 of 1992 and investigation started. The police collected evidence and, having found it to be sufficient to connect the appellant with

the crime, filed charge sheet in the Court of learned Judicial Magistrate, First Class, at Kheda. Since the offence was triable exclusively by Court of Sessions, the case came to be committed to the Court of Sessions and Sessions Case No.89 of 1993 came to be registered.

1.2 The Sessions Court framed charge at Exhibit 2 for the offence of rape. After considering the evidence led by the prosecution, the Trial Court came to a conclusion that the prosecution was successful in establishing the charge against the appellant and convicted the appellant for the offence of rape under Section 376 of the Indian Penal Code by judgment and order dated 11.9.1997.

1.3 The Trial Court awarded life imprisonment to the appellant and imposed a fine of Rs.30,000/-. The Trial Court also ordered the appellant to pay a compensation of Rs.50,000/- to the prosecutrix within a period of 90 days from the date of the order, failing which, the State was granted liberty to attach the movable and immovable properties and the appellant's share in any joint property and to make auction of the said property for recovery of compensation awarded to the victim. Aggrieved by the said judgment and order, the

original accused-convict has preferred this appeal.

2. Learned Advocate, Mr. Y. N. Ravani, appears for the appellant and learned Additional Public Prosecutor, Mr. K. P. Raval, appears for the State. The record and proceedings are before us.

3. Learned Advocate, Mr. Ravani, submitted that the medical evidence led by the prosecution indicates that there was no external injury found on person of the victim, though the incident took place in a field. He submitted that in medical examination, no sperms were found from the genitals of the victim. The medical evidence also indicates that there was no conclusive evidence to support the prosecution case of forced intercourse (rape). Mr. Ravani submitted that rupture of hymen was noticed by the doctor, but the doctor has admitted that the rupture could be on account of various other reasons.

3.1 Mr. Ravani submitted further that the prosecution evidence clearly indicates that the prosecutrix is dumb congenitally and is mentally retarded. It was submitted that, while recording evidence of victim, assistance of person

conversant with sign language was not taken by the Court by appointing him as interpreter. The Trial Court has not made any attempt to verify the ability of the victim as a witness and whether she is capable of giving correct and proper evidence. The evidence is recorded by the Trial Court in a manner which is prejudicial to the provisions of the Oaths Act. According to Mr. Ravani, even if the evidence of the prosecutrix is taken as it is, it is not suggestive of rape.

3.2 The relationship between the parties is strained and there have been prosecutions interse. This aspect has not at all been considered by the Trial Court, though it emerges from evidence of P.W.1-L.

3.3 It was submitted that there is delay in lodging of F. I. R., which is lodged at about 13.30 hours, though the Police Station is located nearby. There is inconsistency in evidence regarding he time of incident.

3.4 It was also contended by learned Advocate for the appellant that P.W.1-L has not seen the actual act attributed to the appellant. Although the prosecution case is that P.W.1-L lodged the F.I.R., according to her, the F.I.R. was dictated

by her father and it is he, who had put the thumb impression. It is, therefore, contradictory to the evidence on the question as to who was the first informant. It is contended that the father of “L” has not been examined as a witness.

3.5 There is no conclusive evidence that the blood/semen stains on the petticoat of the prosecutrix were of the accused. Sample of either blood or semen of the accused was not collected. The F. S. L. report also is not specific about the group of blood/semen and, therefore, cannot be considered as conclusive proof of the fact that the stains found on the petticoat were that of the blood/semen of the accused.

3.6 Although the place at which the incident has occurred was in vicinity of populated area, no independent witness has been examined by the prosecution.

3.7 The prosecution has not produced any map of the place of incident which could have thrown light on the veracity of the prosecution witnesses.

3.8 Learned Advocate submitted that while reasoning out the conviction, the Trial Court has concluded that there

was sexual assault and then presumes rape, although there is no positive evidence therefor.

3.9 It was contended that the punishment inflicted upon the accused-appellant is highly disproportionate. No exceptional circumstances are recorded by the Trial Court for awarding heavy punishment like imprisonment for life with a fine of Rs.30,000/-.

3.10 It was also contended that the Trial Court could not have directed the appellant-accused to pay the sum of Rs.50,000/-, by way of compensation, in addition to the amount of fine.

3.11 Learned Advocate, Mr. Ravani, placed reliance on several judgments to support his contentions and submitted that the appeal may be allowed and the judgment may be set aside.

4. Learned Additional Public Prosecutor, Mr. Raval, has opposed this appeal. According to him, the evidence led by the prosecution is sufficient to support the conviction. Procedural lapse either in investigation or in trial would not

be fatal to the prosecution. Even if it is found that the lapse is serious, the case may be sent back to the Trial Court for rectification by following requisite procedure, particularly, in recording the evidence of the prosecutrix, who is dumb and retarded. Mr. Raval submitted that the Trial Court took into consideration all relevant aspects and has rendered a reasoned judgment and order and this Court may not interfere with the same.

4.1 However, Mr. Raval could not support the award of compensation by the Trial Court in addition to the fine so also the quantum of punishment in light of the submission made by his counterpart at the trial for awarding 10 years' imprisonment to the appellant-accused.

5. We have examined the record and proceedings in light of the contentions raised before us.

6. The case on hand is a peculiar case where, though the prosecutrix is examined as a witness, we do not have specific oral/verbal evidence supporting the case of rape against the appellant or supporting the case of the prosecution coming from the prosecutrix. The reason is that

the prosecutrix is congenitally dumb and has no ability to speak. We also find that the evidence reflects her retarded state of mind and lack of understanding. The evidence of the prosecutrix is at Exhibit 8.

6.1 We notice from the forenote in the deposition that the Trial Court found that the prosecutrix is unable to speak, but is able to understand the voice and, therefore, her deposition was to be recorded by recording the signs made by her in reply to the questions. It is also recorded by the Court that attempt would be made to put questions as far as possible by specific action. From the forenote, we notice that oath was not administered to the witness, but she was told that, if she tells lie, God would see her (freely translated – God would question her). When she was asked whether one should speak untruth, she answered the question in negative. Thereafter, the deposition is recorded in question answer form.

6.2 We notice while reading the deposition in question answer form that many of the questions put to the witness in examination-in-chief are leading questions and are, therefore, impermissible.

6.3 We also notice that none of the questions in deposition is put to the witness by making physical signs and no such signs are recorded, although the forenote indicated that questions would be put as far as possible by body signs.

6.4 We also notice many answers to the questions which are recorded as if they are answered verbally and in respect of those answers, what were the signs made by the witness are not recorded. With these fundamental defects in recording the evidence of a dumb witness, who is the only eye-witness to the incident, if the deposition is seen, we find following aspects :-

6.4.1 The witness says that she had gone to the field with P.W.1. At that time, the accused had come. On being asked as to what did he do to the witness, she pointed to her genital with her right hand. On again being asked as to what was done to her by the accused, she put her right hand on the left hand and pressed it and put her hands on the shoulders and pressed them. Then she was asked whether the accused had removed his clothes, to which she replied in the affirmative. Then, on being asked as to whether there was any standing crop in the field, she uttered some

ununderstandable sounds, which, according to the Trial Court, meant 'Bajra'. Then the witness is put whether she was thrown to the ground by the accused, to which the witness replied by uttering “Hovey, Hovey” and then, on being asked to demonstrate, she sat down in the witness box. Then the question was put whether the accused slept over her, there again, she made some ununderstandable signs like “Dhadu Hui” and pointed at her genitals.

6.4.2 During cross-examination, she was asked whether her mind is not functioning properly, to which she replied in the affirmative. She also said 'yes' to a question whether she lacks understanding. At that point of time, the Court intervened and showed her a pen and a pencil and asked her to give pen to the Court, in response whereto, she gave pencil to the Court.

6.4.3 From the reading of the above deposition, we find that not only the recording of the deposition is defective by not recording the gestures made by the witness in reply to the questions, by putting leading questions in examination-in-chief, by interpreting ununderstandable signs made by the dumb witness without the help of an interpreter, who could

have interpreted the gestures made by the witness, but also we find that the witness has a retarded mind and lacked proper understanding. Apart from her admission that effect, her act of showing pencil in place of pen would indicate that the witness does not understand the distinction between the two!

6.4.4 Apart from that, the gestures which are recorded by the Trial Court would only indicate that she has pointed at her genitals when she was asked to as to what did the accused do to her. What meaning could be attributed to the utterances made by her is a question that can be answered by a person who has a specialized knowledge in the field of communications with dumb persons. Her gesture of pressing her left hand with right hand or pressing shoulders is difficult to be interpreted. In our opinion, the evidence hardly establishes the accusation of rape against the accused.

6.5 The other evidence led by the prosecution is in the form of deposition of P.W.1 “L”, who happens to be sister of the prosecutrix. She is at Exhibit 6. According to the prosecution, she was the first informant. She had accompanied the prosecutrix to the field to enable her to

attend to nature's call. According to this witness, she had taken her to the field and while the prosecutrix was attending to nature's call, she went back to fetch water to the shed of her uncle, where water was not available and, therefore, she went to a Dhalia for water, where she heard the voice of her sister and, therefore, she rushed there. She found that her sister (the prosecutrix) was lying on the ground and, therefore, she helped her to stand up. She says that the accused-appellant went away therefrom jumping the hedge. She says that the prosecutrix explained to her by body signs that the accused had pushed her to the ground and then had an intercourse. The witness says that she noticed that the clothes of the prosecutrix were spoiled. The prosecutrix was wearing a petticoat over the blouse and a bush-shirt over the blouse. She noticed mud on the body of the prosecutrix. She took her to home and told her mother about the incident and, thereafter, went to the police for lodging the F. I. R.

6.5.1 During cross-examination, the witness admits that the relations with the accused were strained. She also admits that the prosecutrix is dumb and is unable to speak. She also admits that the prosecutrix is of an unsound mind. According to the witness, when she heard the shouts of the prosecutrix,

she was at a distance of about 200 feet. There was standing crop of Bajra in the field which was about waist high. According to her, the incident occurred at about 9.00 A. M. She admits that, apart from her, there were other persons in the field. She admits that the field of Mohanbhai Shanabhai is on the eastern side of the place of incident and she did not tell anything to Mohanbhai about the incident.

6.5.2 She states that, after they went to Kheda to lodge the F. I. R., the F. I. R. was given (dictated) by her father and the police recorded her statement as well as the statement of her brother. On being specifically asked whether she lodged the F. I. R., she says that she was interrogated and, thereafter, her father lodged the F.I.R. He had put his thumb impression on the F.I.R. and, thereafter, she has put her thumb impression. She admits that the prosecutrix is younger to her by about one and a half years to two years. She asserted that, she saw the accused running away.

6.6 What emerges from the evidence of this witness is that she does not claim to have witnessed the actual act of coitus or rape. What she asserts is that she saw the accused running away and that she found her sister lying on the

ground with mud stuck and she was also told by her sister that the accused had pushed her to the ground and committed intercourse.

6.7 In light of the above two oral evidence, if the medical evidence is seen, Dr. Harshadray Dalsukhray Sevak is examined at Exhibit 9. He is a general practitioner, who says that the prosecutrix used to have hysteric attacks. She is not able to speak, but can explain by sign language. The doctor admits that the prosecutix is not a psychiatric but he opines that she is mentally infirm. He admits that he does not know the distinction between illusion, hallucination and delusion.

6.8 Another medical evidence is in nature of affidavit by Dr. Kamleshbhai Mohanbhai Vankar. His evidence was taken on affidavit after an order was passed by the Trial Court below application Exhibit 10 praying for such a permission. The permission was sought on the ground that the witness suffered paralysis and he was not able to speak or write as the right part of the body was affected. The Trial Court has in its order also recorded that the witness was not capable of speaking or writing and as there was no objection in admitting the contents of the medical report of the accused, the

application was granted and the evidence in the form of affidavit was accepted. The affidavit indicates that the deponent examined the appellant on 20th May, 1992 and found him to be normal and was competent to have intercourse. There waer no external injuries. The deponent has not been cross-examined.

6.9 We find that the affidavit is accepted on record as there was no opposition from the defence, but we are at loss to understand as to who has drafted the affidavit when the deponent was neither able to speak nor able to writ and no explanation in this regard is coming on record nor is this aspect even considered by the Trial Court.

6.10 Dr. Chandrakant Ratilal Radhwani is examined as P.W.5 at Exhibit 22. He had examined the prosecutrix. He says that the history was given to him by “L”, sister of the prosecutrix, but he did not note it down. On examination, he found that left leg and left hand of the prosecutrix were affected by polio. He did not notice any signs of any external injuries all over the body including genitals. There was no presence of blood stains or Smagma on her genitals. However, her hymen was ruptured and there was bleeding

therefrom. There was no foreign body in the uterus. The witness says that he came to a conclusion that possibility of intercourse cannot be ruled out. During cross-examination, the witness admits that he cannot positively say that there was an intercourse. He admitted during cross-examination that no spermatozoa was found from the vagina of the prosecutrix. He admitted that rupture of hymen is an internal injury. He also admitted that intercourse may not have even taken place.

6.11 From the medical evidence, we find that there is no positive evidence that there was intercourse. We find that there was no injury on genitals of the accused and there was no injury on either the accused or the prosecutrix. There was no sperm or semen found from the genitals of the prosecutrix by the doctor who examined her.

7. Now, if we go to the report of the F. S. L., it indicates that the stains of blood/semen found on the petticoat were not identifiable. Sample of semen of the accused or blood of the accused does not seem to have been sent to the F. S. L. No semen was found from the pubic hair of the prosecutrix. The saliva of both the accused and the prosecutrix sent for testing indicated that they both were of

group “A”.

8. P. S. I., Vinod Dundiya, is examined at Exhibit 18. He is the Investigating Officer. He says that the F. I. R. was given by P.W.1-L and it bears the thumb impression of “L”. He says that Exhibit 17-Panchnama was drawn in presence of Panch witnesses where the prosecutrix by her sign language indicated that intercourse was committed with her. The signs were not interpreted by the first informant “L” and the Panchnama does not involve the accused-appellant in any manner.

9. The Panchnama of place of incident was also drawn in presence of Panch witnesses, which is at Exhibit 16, which indicates that the place of incident is in ditch where grass had grown. The size of the ditch is 4' x 3'. The place is shown by the first informant. There are no remarkable indication found at the place of incident. The grass was about 1 feet tall. No remarkable spots including that of semen were found at the place of incident. The Panchnama indicates presence of stool, possibly passed by the prosecutrix.

10. From the above evidence, what glaring features

emerge can be narrated thus :-

(1) Though the prosecutrix is examined, there is no positive oral evidence in respect of rape by the accused.

(2) The prosecutrix is a dumb witness, whose deposition is not properly recorded by the Trial Court. Section 119 of the Indian Evidence Act provides that a witness, who is unable to speak, may give his evidence in any other manner in which he can make it intelligible as by writing or by **signs**. But such writing must be written and the signs made in open Court. Such evidence shall be deemed to be oral evidence. This Court in the case of ***Kumbhar Musa Alib v. State of Gujarat, AIR 1966 Gujarat 101***, while considering this provision, observed that evidence of a dumb witness has to be recorded under this provision and it must be a record of signs and not the interpretation of signs. In the instant case, we find that the Trial Court has not recorded the signs made by the witness at all but has recorded the answer, meaning thereby that the Trial Court has recorded the interpretation of the signs and not the signs itself. We also find some answers where we are not able to imagine

what signs could have been used by the witness to give the answer. We would be contented with only one example. The question put to the witness was whether the accused stays in the town or outside the town and the answer recorded is that the accused stays in the town. Thus, the evidence of the dumb witness (the prosecutrix) has not been properly recorded.

(3) The witness is permitted to put leading questions in examination-in-chief, which is also not permissible.

(4) The assistance of interpreter, who would have special knowledge about sign language, has not been taken by the Trial Court.

(5) The Trial Court has not administered the oath properly to the witness. This does not appear to have been done consciously because of retarded mind set of the witness but inadvertently. The fact, however, remains that the evidence of the dumb witness (the prosecutrix) does clearly reflect the retarded state of mind of the witness. She herself has admitted that her mind does not work properly. Further, instead of pointing at the pen, she

points at the pencil. The factum of the witness being of a retarded mind is also reflected in the deposition of the first informant “L”, who is the sister of the prosecutrix. It is also reflected in the Panchnama of the signs made by the prosecutrix and recorded by the Investigating Officer, which is at Exhibit 17.

(6) P.W.1-first informant “L” is the person who had escorted the prosecutrix to the place of incident and then went to fetch water. Within moments of her leaving the prosecutrix to attend nature's call, she claims to have heard shouts and then she rushes to the place where she claims to have found the prosecutrix lying on the ground and the accused running away from the place by jumping the hedge. The Panchnama of place of incident, Exhibit 16, indicates presence of faeces passed by the prosecutrix. The prosecution case, as a whole, aims at proving that the intercourse was complete because an attempt is made to show that the semen stains found on petticoat of the prosecutrix were that of the accused. It is difficult to accept this theory of the prosecution and story of the witness, if the time aspect is considered. When P.W.1 left the prosecutrix at the place of incident,

the accused was not even seen in the vicinity and, after she left to fetch water, she heard the shouts when she was at a distance of about 200 feet and then when she reached the place, by then the accused had, allegedly, completed the rape and was seen running away by jumping the hedge. Differently put, during the time the first informant left the place and walked for about 200 feet, not only the prosecutrix had attended to nature's call but also the accused had come there and assaulted her and before the first informant could reach the place, travelling only about 200 feet, he had completed the intercourse and left the place and while he was jumping the hedge, he was noticed by the first informant. In our opinion, this time slot between the first informant leaving the victim and returning to the place is too narrow for these events to take place.

(7) Apart from that, we also notice that the evidence of P. W.1-L raises a doubt on the question as to who gave the F. I. R., whether P.W.1-L is the first informant, as is tried to be projected by the prosecution, or whether it was her father. The first informant, in terms, says that the F.I.R. was given by her father and he had put his thumb

impression. Then she says that she also put her thumb impression. On perusal of Exhibit 7, the F. I. R., we find presence of only one thumb impression purported to have been put by P.W.1 “L”. Be that as it may, the fact remains that this witness clearly says that the F. I. R. was given by her father and not her. Interestingly, her father has not been examined by the prosecution.

(8) From the medical evidence, we find total lack of positive evidence of rape and possibility of absence of intercourse is also admitted by the doctor. We also find that there were no external injuries on person of either the accused or the prosecutrix. These pieces of medical evidence will have to be viewed in context of the fact that the evidence of the prosecutrix is not suggestive of rape. The prosecutrix only points at her private parts and there is no other evidence of the alleged act of rape.

(9) Apart from the above aspects, we also notice several other defects in the prosecution case, which are as follows:-

(i) There was no indication of use of any force or violence

at the place of incident. The evidence regarding the time of incident is also not certain. Whether the incident occurred in the morning at about 7.30 A.M. or at 9.00 A. M. or at 10.00 A.M. is not clearly indicated because these timings emerge during the course of recording of evidence at different stages.

(ii) Even if the time of incident is taken as 10.00 A.M., the F. I. R. is lodged at about 1.00 P.M., whereas it has come in evidence that the place of incident and the Police Station are not far off. The delay in lodging the F. I. R. is also not properly explained.

(iii) The samples of blood and semen of the accused were not collected. Though the F. S. L. report indicates presence of semen stain on petticoat of the prosecutrix, it does not clearly indicate to which group the semen stain found on petticoat of the prosecutrix belongs. There was absence of spermatozoa in the vagina of the prosecutrix. There was absence of any semen stain on her pubic hair. There was absence of any stain including that of semen at the place of incident. Against that, there are no marks of any injury on person of the accused and the victim.

11. The evidence led by the prosecution, evaluated as a whole, is found by us, for the foregoing reasons, to be not only shaky and the investigation not only inefficient, but the recording of evidence of a dumb witness is also found to be defective. In our opinion, it would be unsafe to confirm the conviction in such a case where not only the investigation is defective, but also the recording of evidence of an important witness is found to be defective. The evidence of the prosecution, even if taken at face value, does not implicate the appellant of rape. The rest of the evidence is circumstantial in nature, which is found to be defective, as stated above and, therefore, the Trial Court erred in recording conviction on the basis of such evidence. It is also relevant to consider that, admittedly, the parties are on enmical terms and there have been litigations *inter se* in past. The conviction cannot be confirmed and the appeal merits acceptance.

12. We notice from the operative part of the order of the Trial Court that the learned Trial Judge has, besides imposing penalty, directed the accused-appellant to pay a compensation of Rs.50,000/- to the prosecutrix within 90 days from the date of the order, failing which, liberty was granted

to the state to attach the movable and immovable property of the appellant and his share in any joint property and to make an auction of the said property for recovery of the amount of compensation awarded to the victim. This, in our opinion, is impermissible in law. In this regard, we may refer to Section 357 of the Code of Criminal Procedure. Two situations are envisaged by the provision, (1) where the Court imposes a sentences of which fine forms a part and (2) where the Court imposes a sentence of which fine does not form a part. In the first situation, where the Court imposes a sentence of which fine forms a part, the Court is given power to order that fine recovered may be applied in payment to any person as compensation for any loss or injury caused by the offence when the compensation is, in the opinion of the Court, recoverable from such person in a Civil Court [Section 357(1)(b)]. In the second situation, where the Court imposes a sentence of which fine does not form a part, the Court may, while passing the judgment, order the accused person to pay, by way of compensation, an amount that may be specified in the order to the person who has suffered any loss or injury by reason of the act for which the accused person is sentenced [Section 357(3).]

13. If we read the operative part of the order passed by the Trial Court, we find that the appellant was sentenced to undergo imprisonment for life and to pay a fine of Rs.30,000/-. The case, therefore, would attract Section 357(1)(b). The case would not attract sub-section (3) of Section 357 and unless it is found that the fine does not form part of the sentence, separate compensation cannot be ordered to be paid by the accused to the person who has suffered injury or loss. The learned judge, therefore, committed an error in directing the accused-appellant to pay a compensation of Rs.50,000/- to the prosecutrix. In this regard, we may refer to the decision in the case of ***Mer Malde Veja & Another v. State of Gujarat, 1998 Cri. L.J. 4412***, where a specific view was taken by this Court that under Section 357 of the Code of Criminal Procedure, an order to pay compensation can be made when a Court imposes a sentence of fine or a sentence including a sentence of death of which fine forms a part while passing the judgment and the Court can order the whole or any of the part of the fine recovered, inter alia, to be applied to the payment to any person of compensation for any loss or injury caused by the offence when the compensation is, in the opinion of the Court, recoverable by such person in a Civil Court. The Court also observed that in sub-section (3) of

Section 357, it is provided that when a Court imposes a sentence of which fine does not form a part, the Court may, while passing the judgment, order the accused person to pay, by way of compensation, such amount, as may be specified in the order, to the person who has suffered any loss or injury by reason or the act for which the accused person has been so sentenced. In that case also, the Trial Court had directed the accused persons to pay compensation of Rs.15,000/- each to the heirs of the victim and, this Court, considering the provision of Section 357 of the Code of Criminal Procedure, while confirming the conviction and sentence imposed by the Trial Court on all counts, set aside the direction regarding payment of compensation.

13.1 In ***Sivasuriyan v. Thangavelu, (2004) 13 SCC 795***, the Apex Court took a view that powers under Section 357(3) can come into play only where the Court has imposed a sentence which does not include a fine. The Trial Court was, therefore, in error in directing the accused-appellant to pay compensation of Rs.50,000/- over and above the fine of Rs.30,000/- already imposed by it.

13.2 In the result, the direction on the appellant to pay

compensation of Rs.50,000/- deserves to be set aside.

14. We may further observe that the observations made by the Trial Court granting liberty to attach the share of the appellant in any joint property and to make an auction of the said property for satisfying the compensation to the victim is also not legally sustainable.. These directions were unwarranted as the Trial Court itself was not sure about any share of the accused in any joint property.

15. For the foregoing reasons, the appeal is allowed. The judgment and order of conviction and sentence rendered by the Trial Court is hereby set aside. The order of the Trial Court requiring the appellant to pay compensation of Rs.50,000/- over and above th fine amount is hereby set aside.

15.1 The appellant is on bail. His bail bond stand cancelled.

[A. L. DAVE, J.]

[BANKIM N. MEHTA, J.]

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